

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

MARILYN KUNELIUS,

Plaintiff,

v.

TOWN OF STOW, et al.

Defendants.

Civil Action No. 05-11697-GAO

**DEFENDANTS' OMNIBUS MOTION TO STRIKE  
PORTIONS OF PLAINTIFF'S EVIDENCE OFFERED IN SUPPORT OF  
PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT**

Defendants The Trust for Public Land ("TPL") and Craig A. MacDonnell ("MacDonnell") hereby move to strike the following pieces of evidence offered by Plaintiff Marilyn Kunelius in support of her motions for summary judgment. As set forth at length in TPL and MacDonnell's supporting Memorandum of Law, the following evidence constitutes testimony without a basis in personal knowledge, inadmissible lay opinion, impermissible hearsay, documents that have not been authenticated, and other material contravening the evidentiary requirements of Rule 56.

**Affidavit of Plaintiff Marilyn Kunelius**

**Kunelius Aff. ¶ 2(d)**

**Objection**

\_\_\_ Objection sustained \_\_\_ Objection overruled

No personal knowledge, impermissible lay opinion

**Kunelius Aff. ¶ 3**

**Objection**

\_\_\_ Objection sustained \_\_\_ Objection overruled

No personal knowledge, impermissible lay opinion

**Kunelius Aff. ¶ 8**

**Objection**

\_\_\_ Objection sustained \_\_\_ Objection overruled No personal knowledge, impermissible lay opinion

**Affidavit of Peter Kachajian**

**Kachajian Aff. ¶ 8**

**Objection**

\_\_\_ Objection sustained \_\_\_ Objection overruled Hearsay

**Kachajian Aff. ¶ 11**

**Objection**

\_\_\_ Objection sustained \_\_\_ Objection overruled Hearsay

**Plaintiff's Appendices**

**Pl. Mot. Ex. D, Mem. Ex. JJ –  
Serena Furman's Deposition Testimony  
Regarding TPL's Conduct  
(Dep. Tr. Vol. I 110:4-9)<sup>1</sup>**

**Objection**

\_\_\_ Objection sustained \_\_\_ Objection overruled Irrelevant, conclusory statement, impermissible lay opinion, not qualified as an expert

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<sup>1</sup> As noted elsewhere in TPL's filings, Plaintiff has unaccountably filed two appendices on summary judgment—one in support of her motions for summary judgment, and one in support of her memorandum of law. Consequently, there is no unique identifier for each of Plaintiff's exhibits. Throughout TPL's submissions, exhibits from Plaintiff's Motion Appendix are designated "Mot. Ex." and those from her Memorandum Appendix are designated "Mem. Ex."

**Pl. Mot. Ex L, Mem. Ex. ZZZ –  
The Jacob Diemert Letter  
KUN428-429**

**Objection**

\_\_\_ Objection sustained \_\_\_ Objection overruled Hearsay

**Pl. Mem. Ex. DD –  
The Beacon Villager Article  
TPL-KUN01488**

**Objection**

\_\_\_ Objection sustained \_\_\_ Objection overruled Hearsay

**Complaint Ex. 6 –  
The Jones Memorandum**

**Objection**

\_\_\_ Objection sustained \_\_\_ Objection overruled Irrelevant, not properly authenticated

**Pl. Mot. Ex. DD, Mem. Ex. J –  
The Appraisal Letter  
TPL-KUN 01317-01318**

**Objection**

\_\_\_ Objection sustained \_\_\_ Objection overruled Hearsay, not properly authenticated, lacks foundation

**Pl. Mot. Ex. D, Mem. Ex. JJ –  
Serena Furman's Deposition Testimony  
Regarding Fundraising  
(Dep. Tr. Vol. I 151:21-152:6)**

**Objection**

\_\_\_ Objection sustained \_\_\_ Objection overruled No personal knowledge

**Pl. Mot. Ex. EEE, Mem. Ex. FF –  
FORA Letter  
TPL-KUN 01621-01622**

**Objection**

\_\_\_ Objection sustained \_\_\_ Objection overruled Hearsay

**Pl. Mot. Ex. FFF, Mem. Ex. EE –  
Christianson Email  
FURMAN 00087-00089**

**Objection**

\_\_\_ Objection sustained \_\_\_ Objection overruled Hearsay

In further support of this motion, TPL and MacDonnell submit the attached Memorandum of Law. For the reasons explained therein, the above-listed evidence is inadmissible and must be stricken from the record.

Respectfully submitted,

THE TRUST FOR PUBLIC LAND and  
CRAIG A. MACDONNELL

By their attorneys,

/s/ Richard A. Oetheimer

Richard A. Oetheimer (BBO # 377665)

Patricia M. Murphy (BBO # 665056)

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Dated: November 16, 2007

**CERTIFICATION UNDER LOCAL RULE 7.1 AND CERTIFICATE OF SERVICE**

I, Richard Oetheimer, hereby certify that counsel for The Trust for Public Land and Craig MacDonnell attempted to confer with Michael McLaughlin, counsel for Plaintiff, in a good faith attempt to narrow the issues in this motion prior to its filing, but was unable to reach him.

I further certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on November 16, 2007.

/s/ Richard Oetheimer

Richard Oetheimer